

2015 CIV 241 PDC/CL

CLERK'S OFFICE
CLEVELAND, OHIO

IN THE COMMON PLEAS COURT OF MIAMI COUNTY, OHIO
GENERAL DIVISION

CASE NO. 15-090

JOHN ROE :
C/O DAVID E. BEITZEL :
22 NORTH SHORT ST. :
TROY, OHIO 45373 :
& :
JANE ROE :
C/O DAVID E. BEITZEL :
22 NORTH SHORT ST. :
TROY, OHIO 45373 :
PLAINTIFFS :
VS. :
AMAZON.COM, INC. :
1918 8TH AVE. :
SEATTLE, WA 98101-1244 :
AND :
BARNES & NOBLE, INC. :
122 5TH AVE. :
NEW YORK, NY 10011-5605 :
AND :
APPLE, INC. :
1 INFINITE LOOP STOP 36-TX :
CUPERTINO, CA 95014-2083 :
:

AND :
:
JANE DOE AKA LACEY NOONAN :
DEFENDANTS :
:
:
:

Now come the Plaintiffs, by and through counsel, and for their Complaint against the Defendants aver as follows:

FIRST CLAIM

1. Plaintiffs are residents of Miami County, Ohio, are domiciled in Ohio and all events given rise to the claims for legal liability herein arise in this venue. The Plaintiffs' identities are not being disclosed as a matter of public record herein as their privacy interests substantially outweigh the presumption of open judicial proceedings. Plaintiffs will be filing motions for protective orders herein to protect their privacy from further public disclosure in the context of what has been done to them by the Defendants already. The practice of proceeding under a pseudonym is well established in Ohio particularly when the actions of Defendants have already resulted in substantial damage to Plaintiffs and would result in more privacy violations and harassment by adding to the negative publicity already caused by the actions of the Defendants. Appropriate protective orders will allow the Defendants to conduct discovery, prepare a defense, if any, and know who their accusers are.

2. The Defendants, Amazon.com, Inc., Barnes & Noble, Inc. and Apple, Inc. (hereinafter, the "Corporate Defendants"), are all legal entities transacting business in the State of Ohio and/or have committed tortious acts in the State of Ohio against the Plaintiffs. The Defendant, Jane Doe, is an individual whose true identity is unknown to the Plaintiffs although she transacts business under the pseudonym, Lacey Noonan. This Court has personal jurisdiction over all Defendants.

3. The Defendant, Jane Doe, sometime on or before the calendar year 2014 wrote and caused to be published a book entitled *A Gronking to Remember*. The Corporate Defendants, offered the book for sale for in the State of Ohio on their respective websites. The book has and is being offered for sale in both digital formats (e.g. Nook, Kindle, iBooks) as well as in paperback.

4. The cover of the book contains a photograph of the Plaintiffs which was taken as part of their engagement journey leading toward their wedding. The photograph was appropriated by the Defendants for commercial gain without the permission of the Plaintiffs nor with the permission of any lawful copyright holder. The Plaintiffs were not compensated for the use of their image on the cover of these books. The Plaintiffs did not place the

photograph on the internet for expropriation as the color photograph on the cover of these books.

5. The subject matter of the book, *A Gronking to Remember*, is less than tasteful and is offensive. The use of the Plaintiffs image has held them up to ridicule and embarrassment. This outrageous connection has been further aggravated when the book, with the Plaintiff's image, has been reproduced in the media nationwide. The book has been shown as a source of ribald humor on *The Tonight Show* and *Jimmy Kimmel Live* as well as being displayed and read before the press at media day for the Super Bowl.

6. The photograph of the Plaintiffs contained on the cover of this book constitutes their *persona* to which the Plaintiffs own a right of publicity for commercial purposes. Plaintiffs never gave written or any other form of consent to the appropriation of their *persona*. The use of the Plaintiff's *persona* by the Defendants for commercial purposes constitutes a violation of Chapter 2741 of the Ohio Revised Code.

7. As a result of Defendants' wrongful appropriation of Plaintiffs' *persona* for commercial purposes, the Plaintiffs are entitled to the recovery of actual damages, including any profits derived from and attributable to such unauthorized use. In the alternative, the Plaintiffs are entitled to statutory damages in an amount of \$10,000.00.

8. In order to elect remedies as set forth in the preceding paragraph, the Plaintiffs are entitled to a full and complete accounting from each of the Defendants.

9. Plaintiffs are entitled to the recovery of punitive damages.

10. In addition, the Plaintiffs are entitled to the recovery of their attorney fees, courts costs and reasonable expenses associated with the pursuit of this civil action. The Defendants knew or should have known that they did not have the right to use the Plaintiffs' *persona* for commercial purposes entitling the Plaintiffs to the recovery of treble damages.

11. The Plaintiffs are also entitled to injunctive relief to stop the wrongful use of their *persona* resulting from the commercial activity of the Defendants both now and in the future. Plaintiffs are further entitled to an Order of Impoundment of all paperback versions of the book so they might be destroyed under the supervision of the Plaintiffs.

SECOND CLAIM

12. Plaintiffs re-allege as if fully re-written herein all allegations set forth hereinabove.

13. The acts of the Defendants constitute an invasion of privacy as that tort is recognized in the State of Ohio.

14. The invasion of the Plaintiffs' privacy was done with a reckless disregard for the rights and dignity of the Plaintiff.

15. As a proximate cause of the acts of the Defendants, the Plaintiffs are entitled to the recovery of compensatory damages, punitive damages and the recovery of their attorney fees.

THIRD CLAIM

16. Plaintiffs re-allege as if fully re-written herein all allegations set forth hereinabove.

17. The acts of the Defendants constitute a violation of Restatement 2d Torts 652 thereby entitling the Plaintiffs to the recovery of compensatory and punitive damages.

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

1. Compensatory damages in an amount exceeding \$25,000 and/or for statutory damages of \$10,000;

2. A complete and exhaustive accounting from each Defendant of all monetary transactions arising from commercial activity wrongfully using the Plaintiffs' *persona*;

3. Punitive damages in an amount sufficient to deter each Defendant from engaging in this behavior in the future;

4. Recovery of all Plaintiffs attorney fees incurred on an hourly basis in the prosecution of this civil action, court costs and reasonable expenses associated with this civil action;

5. Treble damages;

6. Injunctive relief to stop the wrongful use of Plaintiffs' *persona* resulting from the commercial activity of the Defendants both now and in the future as well as an Order of Impoundment of all paperback versions of the book so they might be destroyed under the supervision of the Plaintiffs.

David E. Beitzel (0018224)
Trial Attorney
BEITZEL LAW OFFICE
22 North Short St.
Troy, Ohio 45373
Telephone: 937-440-9220
Facsimile: 888-779-7765
E-mail: dbeitzel@beitzelaw.LegalOffice.pro
Attorney for Plaintiffs

Shelee M. Busch (0091954)
22 North Short St.
Troy, Ohio 45373
Telephone: 937-829-6697
E-mail: SheleeBusch@gmail.com
Attorney for Plaintiffs

JURY DEMAND

Now come the Plaintiffs and hereby demand a trial by jury for all issues herein so triable.

David E. Beitzel

INSTRUCTIONS FOR SERVICE

TO THE CLERK:

Please issue service of summons and a copy of this Complaint to each Defendant by certified mail, return receipt request, at the address for each Defendant set forth in the caption of this Complaint.

David E. Beitzel

EXHIBIT B

Court of Common Pleas, Miami County, Troy, Ohio

SUMMONS ON COMPLAINT

Rule 4 1970 Ohio Rules of Civil Procedure

Case No. 15 CV 00090

JOHN ROE
C/O DAVID E BEITZEL
22 NORTH SHORT STREET
TROY, OH 45373

JANE ROE
C/O DAVID E BEITZEL
22 NORTH SHORT STREET
TROY, OH 45373

Plaintiff(s)

Vs.

AMAZON.COM INC
1918 8TH AVE
SEATTLE, WA 98101

BARNES & NOBLE INC
122 5TH AVE
NEW YORK, NY 10011

APPLE INC
1 INFINITE LOOP STOP 36-TX
CUPERTINO, CA 95014

JANE DOE
AKA LACEY NOONAN

Defendant(s)

To the above named Defendant(s):

You are hereby summoned that a complaint (a copy of which is hereto attached and made a part hereof) has been filed against you in this court by the plaintiff(s) named herein.

You are required to serve upon the Plaintiff(s) attorney, or upon the Plaintiff(s) if he/she has no attorney of record, a copy of your answer to the complaint within 28 days after service of this summons upon you, exclusive of the day of service. Said answer must be filed with this court within three days after service on Plaintiff's Attorney.

The name and address of the Plaintiff(s) Attorney is as follows:

DAVID E. BEITZEL 22 N. SHORT STREET TROY, OH 45373

(937)-440-9220

If you fail to appear and defend, judgment by default will be taken against you for the relief demanded in the complaint.

Jan A. Mottinger – Clerk of Courts

By: Beth A. Lober

Date: February 24, 2015

Deputy

EXHIBIT C



2015 MAR 10 AM 10:42
JAH A. HOGG,
CLERK OF COURT

Date Produced: 03/09/2015

MIAMI COUNTY CLERK OF COURTS - COMMON PLEAS:

The following is the delivery information for Certified Mail™ item number 7199 9991 7031 9698 2357. Our records indicate that this item was delivered on 03/02/2015 at 08:31 a.m. in CUPERTINO, CA 95014. The scanned image of the recipient information is provided below.

Signature of Recipient :

Signature	Antonio Aguilar
Printed Name	Antonio Aguilar

Address of Recipient :

Delivery Address	APPLE
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Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

EXHIBIT D



RECEIVED
CLERK OF COURT

2015 MAR 10 AM 10:42

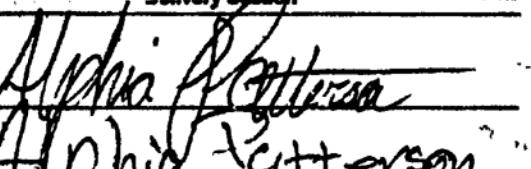
JAN A. MOORE
CLERK OF COURT

Date Produced: 03/09/2015

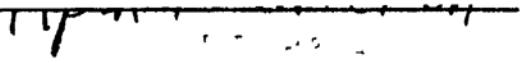
MIAMI COUNTY CLERK OF COURTS - COMMON PLEAS:

The following is the delivery information for Certified Mail™ item number 7199 9991 7031 9698 2333. Our records indicate that this item was delivered on 03/02/2015 at 11:57 a.m. in SEATTLE, WA 98101. The scanned image of the recipient information is provided below.

Signature of Recipient :

Signature	
X	
Printed Name	Anna Patterson

Address of Recipient :

Delivery Address	
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Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

EXHIBIT E



RECEIVED
CLERK OF COURT

2015 MAR 10 AM 10:42

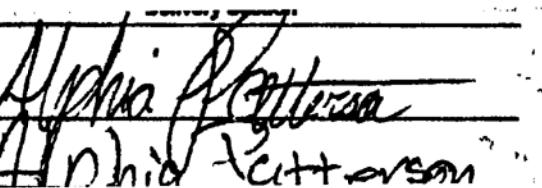
JAN A. MOORE
CLERK OF COURT

Date Produced: 03/09/2015

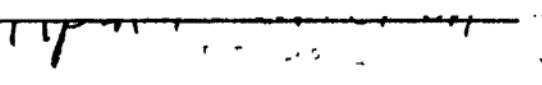
MIAMI COUNTY CLERK OF COURTS - COMMON PLEAS:

The following is the delivery information for Certified Mail™ item number 7199 9991 7031 9698 2333. Our records indicate that this item was delivered on 03/02/2015 at 11:57 a.m. in SEATTLE, WA 98101. The scanned image of the recipient information is provided below.

Signature of Recipient :

Signature	
X	
Printed Name	Alpha Patterson
	Alpha Patterson

Address of Recipient :

Delivery Address	
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Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

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EXHIBIT F

Search Criteria	%Open	15 CV 00090	ROE, JOHN et al	vs.	AMAZON.COM INC et al	CMG
%Close						
%Save	Docket Entry		>	Begin Date	>	SortDescending
%Print	Images	All Dockets		End Date	>	
	Participant					
	Display	Exclude Non Display Dockets				
	Option					

2/24/2015 SPECIAL PROJECTS ACCOUNT CIVIL PETITIONS, OTHER
THAN DOMESTIC RELATIONS Receipt: 101461 Date: 90.00

02/24/2015

DEPOSIT Receipt: 101461 Date: 02/24/2015

147.50

2/24/2015

FEES FOR COMPUTERIZATION OF CLERK'S OFFICE
Receipt: 101461 Date: 02/24/2015

10.00

2/24/2015

FEES PAID PURSUANT TO ORC 2303.201(B) AND LEGAL
RESEARCH FEES Receipt: 101461 Date: 02/24/2015

27.50

2/24/2015

COMPLAINT FILED Receipt: 101461 Date:
02/24/2015

25.00

EXHIBIT G

**COURT OF COMMON PLEAS
MIAMI COUNTY, OHIO**

ROE, JOHN, et al.,

Plaintiffs,

Case No. Case No. 15-cv-00090

-vs-

Judge Christopher Gee

AMAZON.COM, INC., et al.,

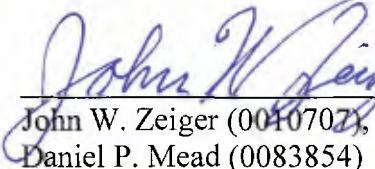
Defendants.

NOTICE OF FILING OF NOTICE OF REMOVAL

Defendants Amazon.com, Inc. (“Amazon”), Apple Inc. (“Apple”), and Barnes & Noble, Inc. (“Barnes & Noble”) (collectively, the “Defendants”) hereby give notice of removal of the above-captioned action from the Court of Common Pleas of Miami County, Ohio, to the United States District Court for the Southern District of Ohio, Western Division. In support thereof, the Defendants respectfully state that on March 27, 2015, the Defendants filed a Notice of Removal in the District Court. A copy of that notice is attached as Exhibit 1.

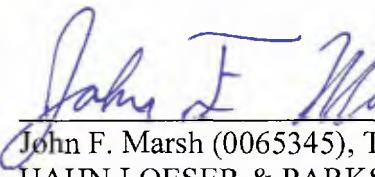
WHEREFORE, the undersigned Defendants remove this action from the Court of Common Pleas to the District Court and respectfully request that this Court take no further action in this case.

Respectfully submitted,


John W. Zeiger (00107023, Trial Attorney *per phone authority*)
Daniel P. Mead (0083854)

ZEIGER, TIGGES & LITTLE LLP
3500 Huntington Center
41 South High Street
Columbus, Ohio 43215
(614) 365-9900
(Fax) (614) 365-7900
zeiger@litoohio.com

Attorneys for Apple Inc.


John F. Marsh (0065345), Trial Attorney *per phone authority*
HAHN LOESER & PARKS LLP

65 East State Street
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(Fax) (614) 233-5107
jmarsh@hahnlaw.com

Attorney for Amazon.com, Inc.


Aneca E. Lasley (0072366), Trial Attorney *per phone authority*
SQUIRE PATTON BOGGS

2000 Huntington Center
41 South High Street
Columbus, OH 43215
(614) 365-2700
(Fax) (614) 365-2499
aneca.lasley@squirepb.com

Attorney for Barnes & Noble, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served via email and regular United States mail, postage prepaid, this 27th day of March, 2015, upon the following:

David E. Beitzel, Esq.,
Beitzel Law Office
22 North Short Street
Troy, OH 45373

Attorneys for Plaintiffs John Roe and Jane Roe

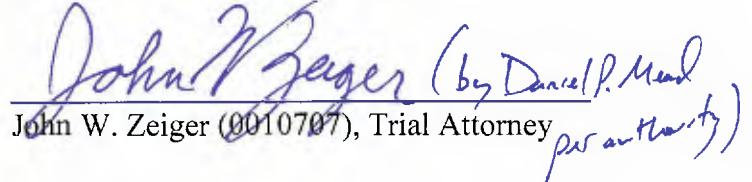

John W. Zeiger (0010707), Trial Attorney
*(by Daniel P. Mead
per authority)*

EXHIBIT H

SHUKAT ARROW HAFER WEBER & HERBSMAN, L.L.P.
ATTORNEYS AT LAW
494 EIGHTH AVENUE SIXTH FLOOR
NEW YORK, NEW YORK 10001

ALLEN H. ARROW
J. JEFFREY HAFER
DOROTHY M. WEBER
JONAS E. HERBSMAN
KERRY L. SMITH
JASON A. FINESTONE
MICHAEL B. FRISCH
ELLIOT A. RESNIK
CODY A. BROWN

JUDITH A. MEYERS*

PETER S. SHUKAT (1970-2014)

TELEPHONE (212) 245-4580
TELECOPIER (212) 955-6471

* OF COUNSEL

WRITER'S E-MAIL:
dorothy@musiclaw.com

March 27, 2015

James J. Pastore Jr., Esq.
Debevoise & Plimpton, LLP
919 Third Avenue
New York NY 10022

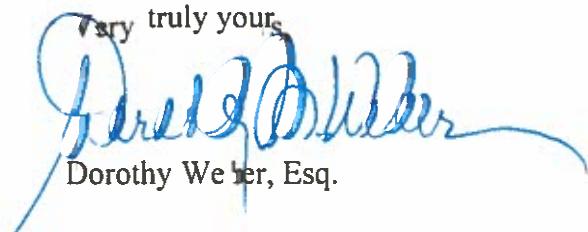
Re: John Roe, et. al v. Amazon.com Inc, et. al, 15 Civ. 90 (Court of
Common Pleas, Miami County, Troy, Ohio, Feb. 24, 2015)

Dear Mr. Pastore:

Pursuant to our discussion, I am providing this letter in connection with a notice of removal that I understand is being filed by certain of the defendants in the above-captioned matter. This letter confirms that:

1. I represent Defendant Jane Doe, a/k/a "Lacey Noonan," in connection with the above-captioned matter.
2. Defendant Doe is not a citizen of Ohio.
3. Defendant Doe has not been served with the Complaint in this matter, nor has Defendant Doe waived service. I have, however offered to Plaintiffs' counsel to make available Defendant Doe's contact information.
4. Defendant Doe consents to removal of this action to federal court.

Please do not hesitate to contact me if you have any further questions.

Very truly yours,

Dorothy Weber, Esq.

DMW:jp